IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-10-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.27778 OF 2006

1.M/s.Shree Maruthi Yarns,
rep.by its Partner K.Murugesan.

2.K.Murugesan
3.M.Shylaja
4.K.Murali ... Petitioners/Accused

-vs-

M/s.Sri Ramakrishna Mills (Coimbatore) Limited,
rep.by its Accounts Officer/
Power Agent R.Manoharan ... Respondent/Complainant

Petition under Section 482 of the Code of Criminal Procedure.

For petitioners : Mr.C.Vijayakumar

For respondent : Mr.A.Ramesh
for M/s.Ram & Ram.

O R D E R

This petition has been filed to call for the records in C.C.No.104 of 2004, pending on the file of Judicial Magistrate Court, Sathiamangalam, and quash the same.

2. Petitioners are accused in the calendar case, which was registered on the strength of a private complaint, lodged by the respondent, under Section 138 of The Negotiable Instruments Act, as regards dishonour of a cheque.

3. While the court fee payable for the complaint was Rs.325/-, at the time of presenting the complaint on 29.09.2003, the complainant paid Rs.100/- only, thereby the complaint was returned

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by the Judicial Magistrate on 10.10.2003, mentioning, "sufficient stamps to be affixed".

4. After complying with the said direction, the complaint was re-presented on 16.10.2003 and, on 20.10.2003, the said complaint was again returned with an endorsement that in the petition, name of the accused, who issued the cheque on behalf of the firm, i.e., fourth accused was not clearly mentioned. When it was re-presented on 23.10.2003 on fourth occasion, the complaint was again subjected to return by the Court on 14.11.2003, stating that the previous return was not complied with properly and, hence, the same was further re-presented on 19.11.2003. Thereafter, on 09.02.2004, after scrutiny of the complaint and recording the sworn statement of the complainant, the learned Judicial Magistrate found a prima facie case and took cognizance of the matter.

5. The main contention of the learned counsel for the petitioners is that after receipt of a complaint by a criminal Court, return of the same to the complainant is alien to criminal law and, hence, the complaint has to suffer dismissal *in limine*, in view of the defects found therein. It is his further contention that the moment the court seal is affixed on the complaint, the complaint becomes the property of the Court and it is strange to return back the same, which act of the Court would vitiate the proceedings and that the law expects a defect free complaint to be made to a Judicial Magistrate to take cognizance of the offence and, as a corollary, the Magistrate should have dismissed the complaint under Section 203 Cr.P.C. Also, it is his argument that repeated returns of complaint by the Judicial Magistrate is out of the framework of The Negotiable Instruments Act and, by means of return, the legal point of limitation for lodging the complaint is miserably thwarted.

6. One more point canvassed on behalf of the petitioners is that there is no provision either in Cr.P.C. or Criminal Rules of Practice, for return of complaint, for the purpose of affixing proper court fee, after it was presented with deficit court fee and, as such, the complaint should have suffered dismissal at the hands of the Magistrate, for insufficient court fee.

7. Conversely, learned counsel for the respondent would submit that law recognises return of complaint by a Judicial Magistrate, for making good of certain defects, and, returning of complaint, which was presented to the Court in time, and its representation afterwards could, in no way, be construed as extension of statutory period of limitation and the order of returning the complaint was only administrative, which was not at all judicial, so as to prejudice the rights of the other side, which have accrued to him by law of limitation.

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8. In order to justify the order of return passed by the Judicial Magistrate, learned counsel for the respondent seeks aid of Section 207 Cr.P.C., which provides that when the Magistrate is not competent to take cognizance of the matter, he may return it for presentation before the proper Court. By saying so, the learned counsel submits that the return of complaint cannot be said to be unknown to criminal law. In so far as affixing of inadequate court fee is concerned, he relied upon the provisions of Sections 4 and 5 of the Tamil Nadu Court Fee and Suit Valuation Act,1955, which empower the Presiding Officer of a Court to extend the time for affixing proper court fee payable on the plaint or petition, as the case may be. In support, he also relies upon the analogous provisions of Order 7, Rule 11 C.P.C., stating that the plaint shall be rejected only where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so. He further adds that the Court has got every right to require a party to supply additional requisite stamp paper to rectify the defect, which is a mere procedural aspect and not an illegality.

9. With regard to the events of returning and re-presenting the complaint by the Court and the complainant respectively, we have to see, whether they would prejudice the valuable legal rights of the accused. If the answer is positive, the proceedings in C.C.No.104 of 2004 will have to face quashment.

10. It is well settled that an irregularity can at any time be rectified, but the answer will be emphatically NO, in case of illegality and if it occurs in a proceeding, it has to be axed out.

11. Learned counsel for the petitioners cites a Division Bench decision of this Court in *A.Vinayagam and three others* v. *Dr.Subash Chandran and another,* 2000 (I) CTC 225, in which it was held that it is the duty of the complainant to produce defectless complaint, which becomes the property of the Court, after Court seal is affixed on it and the Court fee stamps have been cancelled. It was further held therein that endorsement of returns would not be termed to be judicial orders and they could, at the most, be termed to be administrative orders and only after examining the complainant or witnesses, the order passed by the Magistrate would be a judicial one, in the absence of which, the Judicial Magistrate has no jurisdiction to pass any orders. In the said decision, two previous judgments of this Court in *T.Vanamalai* v. *T.D.Sundara Varadhan,* 1995 (2) L.W.(Crl.) 405 and *D.Ramamoorthy* v. *K.J.Duraisamy,* 1995 (1) L.W. (Crl.) 300, were referred to and finally on the basis of the dictum

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laid down by the Apex Court, it was concluded that the date of initial presentation of the complaint has to be taken for the purpose of calculating the limitation and, hence, it should be deemed to have been validly filed and, on that ground, the accused cannot claim any benefit. The relevant portion of the said Division Bench judgment in *Vinayagam's* case reads as follows :

> 22.... It is the cardinal principle of law that the act of court should not prejudice any one - "*Actus curise neminem Gravabit".* The Supreme Court has reiterated this principle in *Jang Singh v. Brijlal and others,* AIR 1966 SC 1631 : 1964 (2) S.C.R.145. There, the Supreme Court had refused to find fault with a party, who had made short payment by one rupee, for which the court was responsible. We would choose the same course by holding that once the complaints were filed within limitation, merely because the Magistrates, completely contrary to the procedure known to law, chose to return the same without fixing the date for re-presentation, it should not be held that the subsequent filing by the complainants would be held to be beyond limitation."

12. Following the principle laid down in the decision aforementioned, it is to be held that though there was deficit court fee on the date of original presentation of the complaint within the prescribed period of limitation, it could be said to be valid, irrespective of the subsequent returns by the Court. The return of plaint for rectification of certain defects as to court fee and re-presentation by the party after rectification to the Court are the stages in administrative procedures. Since the complainant or any of the witnesses were not examined, the return by the Court was not at all a judicial order, so as to prejudice the accused. The accused has no say in the matter of payment of deficit court fee by the complainant before taking cognizance of the complaint by the Judicial Magistrate, since it is a matter between the Court and the complainant. When the complaint is presented within the statutory period, the accused has no right to focus his attention to the proceedings and contend that the inadequately stamped complaint would cause prejudice to him. In case the complaint got time barred, it could be observed that the valuable statutory right, which would accrue to the accused, would get endangered. In the absence of such circumstance before taking cognizance, the acts of the Court, which are purely administrative in nature, could not be questioned or challenged by the accused persons. Though the return of complaint by the Judicial Magistrate is an irregular procedure, it could not be termed to affect the rights of the accused, as, such

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irregularity could always be rectified. I hasten to add, that, in this case, it is not an irregularity.

13. It transpires that the accused had already knocked the doors of this Court by filing Criminal O.P.No.28835 of 2004 for quashment of the very same C.C.No.104 of 2004 on certain other grounds, but the said petition was dismissed on 24.01.2005.

14. It is contended by the learned counsel for the respondent that the grounds, which are portrayed by the petitioners in the present petition, were already available at the time of filing the previous petition and, after a lapse of about one year, the petitioners have come forward with this petition.

15. On 24.06.2005, the trial has commenced. The complainant filed proof affidavit for chief-examination and produced 36 exhibits. After a lapse of over one year i.e., on 02.11.2006, the present petition has been presented before this court, for quashing the proceedings.

16. In this context, learned counsel for the respondent would strenuously argue that after the trial was opened for examination of witnesses, there would be no quashment of the proceedings and, hence, the case has to see its quietus. He placed reliance upon a decision of this Court in *P.Sumathi* v. *M.P.Ashok*, 2002 (4) CTC 323, in which, a decision of the Hon'ble Apex Court was referred and followed. The relevant portion of the said judgment, which contains the incorporation of the relevant portion of the Supreme Court judgment, is as follows :

> "7. In support of this, I would rely upon the decision reported in *Amar Chand Agarwala v. Shanthi Bose*, AIR 1973 SC 799, wherein it has been observed as follows :
>
> > "Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one court witnesses and the High Court quashed the charge and entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence. The order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to

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> allow the proceedings to go on to come to its logical conclusion, one way or the other and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial court after an appraisal of the entire evidence."

17. Guided by the principles set out in the above said decision of the Apex Court, this Court has to allow the trial Court to proceed with the trial and dispose of the matter. In other words, the case before the trial Court, which is in part-heard stage, can, in no way, be quashed and if any order of quashment is passed, it would be classically improper. Hence, it is not proper for this Court, to exercise the power, conferred under Section 482 Cr.P.C. In the light of the illuminating judicial pronouncements and in view of the circumstances available in this case, no valid ground is made out to interfere with or disturb the proceedings in C.C.No.104 of 2004 on the file of Judicial Magistrate, Sathiamanagalam, and the said case has to come to its logical conclusion.

18. Therefore, this petition is devoid of merits and dismissed. Consequently, the connected Criminal M.P.No.1 of 2006 is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

dixit
To

1.The Judicial Magistrate,Sathiamangalam.

2.-do- Thro The Chief Judicial Magistrate,Erode.

+1cc to Mr.C.Vijayakumar,Advocate Sr 62148
+1cc to M/s.Ram & Ram, Advocate SR 61877

NTK (CO)
km/15.10. CRL.O.P.No.27778 OF 2006

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